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October 9, 1998

VIA HAND DELIVERY

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Secretary
Federal Communications Commission
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

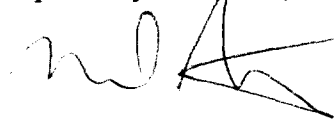
Re: Reply Comments of Cablevision Systems Corp., CC Docket No. 98-146

Dear Ms. Salas:

On behalf of Cablevision Systems Corp. ("Cablevision"), enclosed for filing are an original and four copies of Cablevision's Reply Comments in the above-referenced docket as well as Cablevision's Motion to Accept Late Filed Comments.

If you have any questions concerning this filing, please contact the undersigned. Thank you for your assistance.

Respectfully submitted,



Gil M. Strobel

Enclosure

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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a)
Reasonable and Timely Fashion, and)
Possible Steps to Accelerate Such)
Deployment Pursuant to Section 706 of)
the Telecommunications Act of 1996)

CC Docket No. 98-146

**MOTION TO ACCEPT
LATE FILED COMMENTS**

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October 9, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Reasonable and Timely Fashion, and)	
Possible Steps to Accelerate Such)	
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the Telecommunications Act of 1996)	

**MOTION TO ACCEPT
LATE FILED COMMENTS**

Cablevision Systems Corp. ("Cablevision"), by its attorneys,^{1/} hereby respectfully moves the Commission to accept the attached Reply Comments in the above-referenced proceeding one day late. The grounds for this motion are as follows:

Cablevision encountered unforeseen difficulties that delayed the filing of the Reply Comments and made it impossible to meet the October 8, 1998 filing deadline. As a result of these unforeseen difficulties, the attached Reply Comments are filed one day late. Cablevision submits that no interested party will be prejudiced in any way by the granting of this motion, since: 1) the Reply Comments will be filed and served only one day late; and 2) no further rounds of Comments are scheduled in this proceeding.

^{1/} Cablevision submits this motion pursuant to Section 1.41 of the Commission's Rules. See 47 C.F.R. § 1.41 (1977).

Therefore, Cablevision respectfully requests the Commission to grant this Motion to
Accept Late Filed Comments.

Respectfully submitted,

CABLEVISION SYSTEMS CORP.

A handwritten signature in black ink, appearing to read 'H. Symons', written over a horizontal line.

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October 9, 1998

DCDOCS: 135741.1 (2wql011.doc)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a)	CC Docket No. 98-146
Reasonable and Timely Fashion, and)	
Possible Steps to Accelerate Such)	
Deployment Pursuant to Section 706 of)	
the Telecommunications Act of 1996)	

REPLY COMMENTS OF CABLEVISION SYSTEMS CORP.

Cablevision Systems Corp. ("Cablevision"), by its attorneys, hereby replies to comments filed in response to the Commission's Notice of Inquiry ("NOI") initiated pursuant to section 706 of the Telecommunications Act of 1996.^{1/} In its original comments, Cablevision explained that it is actively making substantial, high-risk investments -- in infrastructure, as well as in content -- to roll out high-speed Internet services to residential customers in its service areas. Furthermore, even in advance of the completion of its network upgrades, Cablevision is making substantial investments to bring high-speed Internet services and customized educational content to schools in service areas such as the Bronx and Brooklyn.

In light of these investments, Cablevision urged the Commission to fulfill its mandate

^{1/} Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, Notice of Inquiry, FCC 98-187 (rel. August 7, 1998) ("Section 706 NOI").

under section 706 by looking into ways to remove whatever regulatory obstacles it can that impede continued broadband infrastructure investment. Cablevision concluded that the *last* thing the Commission should be considering -- as a matter of law and policy -- is the imposition on cable companies of new regulatory obligations that would create enormous *disincentives* for such investment.

In their original comments, American Online ("AOL") and others urged the Commission to consider doing just this. Specifically, AOL urges the Commission to consider requiring cable operators to unbundle their broadband networks so that AOL, which has chosen not to make the high-risk infrastructure investments necessary to deploy high-speed Internet services, can nonetheless enjoy the benefits of such investments. Subjecting a new and dynamic business to the paradigm of common carrier regulation is an anachronism, and is inconsistent with the purposes of the 1996 Act's deregulatory forbearance provision. Moreover, because of the enormous disincentives such unbundling would create, the Commission should reject AOL's proposal as unsound public policy, as well as outside the scope of the Commission's authority under section 706.

ARGUMENT

Perhaps recognizing the weakness of its unbundling proposal, AOL never actually asks the Commission to unbundle cable operators' networks. Rather, it asks "merely" that cable operators provide broadband access to unaffiliated Internet service providers ("ISPs") such as

AOL on a fair and non-discriminatory basis.^{2/} But such a request is disingenuous, since subscribers to cable operator's Internet services, such as Cablevision's Optimum Online service, *already have* fair and non-discriminatory access to unaffiliated ISPs.

The Internet is an open system, which means an Optimum Online user is never more than a proverbial "mouse click" away from AOL (if not closer). Moreover, an Optimum Online user that wants to access AOL and use its services receives a significant discount on AOL's service. AOL's ordinary service costs \$21.95 per month for unlimited access, but AOL also has a service called "bring-your-own-access" (BYOA) to which an Optimum Online user -- or anyone else with her own access to AOL -- may subscribe. And that service costs only \$9.95.^{3/} Significantly, one of the reasons that the price for AOL's BYOA service is relatively inexpensive is that, for every subscriber with her own access, AOL saves on the expenses it would otherwise incur to serve that subscriber in a "dial up" capacity -- expenses related to local phone services, modem banks, and the like.

Once it is recognized that subscribers to cable operator's Internet services already have access to unaffiliated ISPs, the true nature of AOL's request becomes clear: what AOL is really requesting is for the Commission to require cable companies to unbundle the high-speed transmission component of their integrated Internet services and provide that transmission component to AOL *on a wholesale basis*, so that AOL can package it with its existing Internet

^{2/} See AOL comments at 4, 10.

^{3/} See "Top 20 AOL Member Questions," <<http://aol.com/nethelp/top20memberquestions.html>>.

service and provide a high-speed version of such service -- thereby reaping the full rewards of cable operators' enormous infrastructure investments without having undertaken any of the risks.

It is no wonder that AOL chose to obscure the true nature of its request. AOL's primary argument for unbundling under section 706 is that granting the request would actually *spur* "ubiquitous deployment" of broadband access.^{4/} This argument is self-evidently absurd. As described at greater length in Cablevision's original comments, Cablevision has been making enormous, high-risk investments to deliver high-speed Internet services -- high-risk because there is no guarantee that its services will overcome the entrenched customer base and strong brand name of companies like AOL, which has over 13 million customers,⁵ to enjoy a measure of market success. But Cablevision has been willing to take this risk, in part, because it has assumed that if it does overcome these obstacles, it will be able to retain the fruits of its success, including a reasonable return on its investment. But if the government were to impose the draconian unbundling regime AOL urges, and forcibly convert Cablevision into a wholesale conduit provider that must broadly share the fruits of any success, such investment will be placed at serious jeopardy. And if that happens, the real losers will be consumers, who will not have access to "advanced telecommunications capability," contrary to the letter and spirit of section 706.

In this regard, AOL's argument is not unlike the argument sometimes heard that stripping inventors of patent protection would actually spur the dissemination of new inventions, for

^{4/} See AOL comments at 10.

^{5/} AOL comments at 2 (also noting that CompuServe, which is also operated by AOL, has approximately 2 million members of its own). AOL now controls 60% of the market. Hoovers Online, America Online, Inc. Company Capsule (visited October 7, 1998)

without patent protection, more people would be allowed to manufacture and sell new inventions. But such an argument utterly ignores that unless inventors can be assured that they will be able to retain the fruits of their success, they will not have any incentive to create inventions in the first place. In the same way, AOL utterly ignores the impact of its proposal on cable companies' incentives to build (or build quickly) Internet-ready broadband networks.

Finally, in support of AOL's request, the analogy has been drawn to the unbundling requirements that the Telecommunications Act of 1996 imposed on incumbent telephone companies. But such an analogy only highlights how misguided it would be to impose similar requirements on cable companies with respect to their high-speed Internet services. As an initial matter, incumbent phone companies have enjoyed exclusive use of their embedded telephone networks for close to a century, and were historically guaranteed to recover all of the prudently incurred costs of such networks (plus a profit). By contrast, cable companies are still in the middle of building out their advanced Internet-capable networks, and as explained above, have never been guaranteed recovery of their enormous Internet-related investment.

In addition, the potential competitive benefits to be gained by incumbent phone company unbundling are enormous. Even after the 1996 Act, incumbent phone companies enjoy well over 99% of residential telephone market, and phone company unbundling is essential for new competitors to break this monopoly hold. By contrast, cable companies presently have less than two percent of the residential Internet market,^{6/} which is dominated by the very providers (e.g.,

cont'd . . .

<<http://www.hoovers.com/capsules/15558.html?ticker>>.

^{6/} At present, there are approximately 300,000 cable modem customers, with the number expected to rise to 500,000 by the end of the year. NCTA Comments at 9. This represents less

AOL) that seek unbundling. It is also critical to note that the residential Internet market is a nascent one, with all sorts of new entrants (e.g., phone companies, cable companies, satellite companies, wireless companies, etc.) poised to enter with an array of new, differentiated services -- some focusing on providing improved local access, others on providing more appealing content, etc. Consistent with its general deregulatory approach, the Commission ought to let this new market develop naturally and ought to avoid prematurely intervening to pick winners and losers.

Moreover, incumbent phone company unbundling flows from these companies' status as common carriers. By contrast, cable unbundling fundamentally transform cable companies into something they are not, i.e., from integrated content providers to wholesale transmission companies.

Finally, it is quite significant that it was *Congress* (in the 1996 Act), not the Commission, that actually imposed unbundling requirements on incumbent telephone companies (and only *after* promising the major incumbents -- namely, the Bell companies -- *billions* of dollars in new long distance revenue once they fully implement unbundling). Requirements of such economic and constitutional^{7/} moment are best left for Congress to decide. In this regard, it also quite significant that the same Congress that imposed unbundling on incumbent telephone companies

cont'd . . .

than two percent of the 25 million Internet access customers that MindSpring estimates to exist. See MindSpring Comments at 11.

^{7/} Depending on its precise structure (including whether there is an appropriate compensation scheme), a Commission requirement that cable companies unbundle their networks may violate the Fifth Amendment prohibition against uncompensated government takings. See U.S. CONST. amend. V.

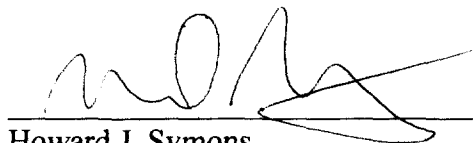
amended Title VI to make clear that cable companies may not be treated as common carriers.^{8/}

CONCLUSION

For the reasons set forth above and in its initial comments, Cablevision urges the Commission to reject requests by AOL and others to impose an unbundling requirement on cable companies. Such requests are contrary to the letter and spirit of section 706, which is designed to encourage -- not discourage -- the deployment of the infrastructure necessary to bring advanced telecommunications capability to all Americans.

Respectfully submitted,

CABLEVISION SYSTEMS CORP.



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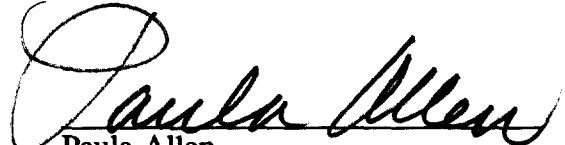
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October 9, 1998

^{8/} In section 621(c) of the Act, Congress precluded the Commission from regulating cable companies as common carriers to the extent they provide cable service. See 47 U.S.C. 541(c). In 1996, Congress expanded the definition of cable service to make it clear that this insulation from common carrier regulation also extended to cable providers providing interactive and information services. See Pub. Law No. 104-104, § 302(a), 110 Stat. 153 (modifying the definition of cable service); Conference Report at 169 (explaining that this modification reflects the "evolution of cable to include interactive services . . . and information services"). See also NCTA Comments at 21-23.

CERTIFICATE OF SERVICE

I, Paula Allen, hereby certify that on this 9th day of October, 1998, I caused copies of the foregoing "Reply Comments Of Cablevision Systems Corp." and "Motion to Accept Late Filed Comments" to be delivered by hand to the following (except where otherwise noted):



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